

MINUTES
HAMILTON COUNTY BOARD OF COMMISSIONERS
JANUARY 26, 2009
Commissioners Courtroom
One Hamilton County Square
Noblesville, Indiana

The Hamilton County Board of Commissioners met in Executive Session at 12:20 p.m. in Conference Room 1A.

Hamilton County Board of Finance [1:14:17]

Board of Finance President Altman called the meeting of the Hamilton County Board of Finance to order. A quorum was present of Christine Altman, Steven Dillinger, Steven Holt and Kim Good.

Ms. Kim Good presented the 2008 Investment Report, Hamilton County Investment Policy and Hamilton County Depository List. Good reported interest earned in 2008 was \$4.2 million, which was less than 2007. Altman asked if the major account that averaged 1.75%, is put out to bid each year? Good stated no. Altman stated those rates seem low to some of the other rates earned. Good stated all of the checks we write do affect the rates. Good is considering putting a bid out, currently some of the accounts the banks are having to waive the service fees because the interest earned is not as much as the service fees.

Holt moved to adjourn. Dillinger seconded. Motion carried unanimously.

Hamilton County Board of Commissioners

President Holt called the public session to order at 1:16 p.m. and declared a quorum present of Commissioner Christine Altman, Commissioner Steven C. Dillinger and Commissioner Steven A. Holt. The Pledge of Allegiance was recited.

Approval of Minutes

Dillinger moved to approve the minutes of November 24, 2008. Altman seconded. Altman asked Rauch if action was taken on the CDBG Grant to amend the plan? Rauch stated no action was taken at the November 24 meeting; it was taken at the following meeting. Motion carried unanimously.

Executive Session Memoranda

Altman moved to approve the Executive Session Memoranda of January 26, 2009. Dillinger seconded. Motion carried unanimously.

Bid Openings [1:18]

Mr. Mike Howard opened the bids in Conference Room 1A. Altman moved to refer the highway bids to the highway department and the Orthophotography RFP's to the ISS Department for review and recommendation at the next meeting. Dillinger seconded. Motion carried unanimously.

Annual Highway Bids

Bids were received for the following categories:

Category 1A – Aggregates (Stone)

Martin Marietta 96th Street

Martin Marietta River Road

IMI Stony Creek – Noblesville

IMI Stony Creek – McCordsville

Category 1B – Aggregates (Gravel)

Martin Marietta – River Road

Martin Marietta – Perkinsville

IMI Stony Creek – Noblesville

IMI Stony Creek – McCordsville

Category 4A – Corrugated Metal Pipe

Metal Culverts, Inc.

St. Regis Culvert

CPI/DEBCO

Category 4B – Corrugated Metal Pipe Arch

Metal Culverts, Inc.

St. Regis Culvert

CPI

Category 5A – Treated Timber Bridge Structures & Bridge Packages

American Timber Bridge & Culvert

CPI/DEPCO (Bid all steel)

Category 6 – Gasoline Fuel, Lubricants

Hamilton County Co-Op

Category 8A – Painted Traffic Markings

A & A Safety, Inc.

The Airmarking company

Gridlock Traffic Systems, Inc.

Highway Technologies

Category 8B – Thermoplastic Traffic Markings

A & A Safety, Inc.

The Airmarking Company

Gridlock Traffic Systems, Inc.

Highway Technologies

Category 8C – Preformed Traffic Markings

The Airmarking Company

Gridlock Traffic Systems, Inc.

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Highway Technologies
Category 8D – Polyester Traffic Markings
Interstate Road Management
Category 8E – No Passing Zone Logs
Interstate Road Management
Category 8F – Epoxy Traffic Markings
The Airmarking Company
Category 8G – Raised Pavement Markings
A & A Safety, Inc.
The Airmarking Company
GridLock Traffic Systems, Inc.
Category 9 – Weed and Brush Control Chemicals & Chemical Tree Trimming
DeAngelo Bros
Daltons Inc.
PACC
Category 10C – Tree Service
Asplundh Tree Expert Co.
Vine & Branch, Inc.
Mt. Hood Tree Service
BAM Outdoor

2009 Orthophotography RFP (Request for Proposal)

Axis Geospatial LLC
Digital Aerial Solutions, LLC
Fugro EarthData, Inc.
Kucera International Inc.
Michael Baker Jr., Inc.
MJ Harden Associates
P2 Energy Solutions, Inc.
Pinnacle Mapping Technologies, Inc.
Sanborn
Stewart Geo Technologies, Inc.
Williams Aerial Mapping, Inc.
Woolpert, Inc.

Highway Business

Acceptance of Bonds/Letters of Credit – Highway Department

Dillinger moved to accept the Bonds and Letters of Credit for the highway department. Altman seconded. Motion carried unanimously.

- HCHD# B-09-0004 – Federal Insurance Company License Permit Bond #8216-14-256 issued on behalf of Paul E. Smith Company, Inc. in the sum of \$5,000 for general contractor to expire January 8, 2010.

Release of Bonds/Letters of Credit – Highway Department

Dillinger moved to release Bonds and Letters of Credit for the highway department. Altman seconded. Motion carried unanimously.

- HCHD #B-08-0002 – Travelers Casualty & Surety Company of America License and Permit Bond #104793650 issued on behalf of Oles Engineering Corporation for sanitary sewer connection in county road right of way at 10555 Spring Mill Road, Carmel, Indiana.

Traffic Study Correspondence

Altman moved to approve the list of correspondence concerning investigations on Hamilton County Roads. Dillinger seconded. Motion carried unanimously.

- Jeff Youker regarding speed limit reduction on Mill Farm Road in Noblesville Township. Highway Department recommends no changes.
- Charlie Green regarding speed limit reduction on Atlantic Road in Wayne Township. Highway Department recommends setting the speed limit at 45 mph from 146th Street to SR 38 and from 1400' south of SR 32 to SR 32. The speed limit from SR 38 to 1400' south of SR 32 should be 55 mph.
- Wendy Alexander regarding speed limit and Children at Play signs in Green Tree Country Club Subdivision in Clay Township. Highway Department recommends installing 25 mph speed limit signs.

Official Actions

Altman moved to approve the Official Actions. Dillinger seconded. Motion carried unanimously.

- Atlantic Road – establishing speed limit and install regulatory signs on Atlantic Road from 146th Street to S.R. 38 and from 1400' south of S.R. 32 to S.R. 32.
- Green Tree Country Club Estates – establishing speed limit and install regulatory signs on Fairway Drive from 96th Street to Dead End 988' West of Greentree Drive. On Greentree Drive from Fairway Drive to Inverness Boulevard.

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Indiana Concrete Masonry Association Award

Dillinger stated he accepted the Award of Excellence from the Indiana Concrete Masonry Association for the Hamilton County Juvenile Detention Center.

Central Indiana Air Quality

Altman stated she attended a meeting of the Central Indiana Air Quality group. Hamilton County has been designated as non-attainment for fine particulate matter. The air monitors are all located in Marion County and they will be in compliance within the next year. Hamilton County will have its own monitor, so we will know what our particulate matters are.

Washington D.C.

Altman will be traveling to Washington D.C. to talk with legislators about the stimulus package and asking them to look favorably on the proposed transit initiatives in Central Indiana.

Superior Court 6 Modifications

Mr. Ollie Schierholz requested permission to modify the Judges' bench in Superior Court 6. The modification is to build and install a wall with a gate and countertop. The total price is \$4,576.00. Altman moved to approve. Dillinger seconded. Motion carried unanimously.

Administrative Assistant

Use of Historic Courtroom

Altman moved to allow the Republican Party to hold their re-organization meeting in the historic courtroom on March 7, 2009 at 10:00 a.m. Dillinger seconded. Motion carried unanimously.

Firestone Property

Altman moved to pursue the acceptance of the donation of property located at 1265 Rolling Ridge Drive from Firestone. Firestone has indicated the property is environmentally clean and she would ask the environmental report be reviewed and then acted upon at the next meeting. Dillinger seconded. Motion carried unanimously.

Resolution for Veterans' Healthcare Services

Dillinger moved to approve the Resolution supporting the mandatory funding for Veterans' Healthcare Services. Altman seconded. Motion carried unanimously.

Health Board Appointment

Dillinger moved to appoint David Dwyer, M.D. to the Hamilton County Health Board. Altman seconded. Motion carried unanimously.

Airport Authority Appointment

Dillinger moved to table the appointment to the Hamilton County Airport Authority. Altman seconded. Motion carried unanimously.

Fishers Plan Commission Appointments

Dillinger moved to appoint Rachel Quade as the Republican appointment to the Fishers Plan Commission. Altman seconded. Motion carried unanimously.

Altman moved to appoint to Anne Kelly as the Democratic appointment to the Fishers Plan Commission. Dillinger seconded. Motion carried unanimously.

Invoices

Mr. Fred Swift stated invoices from Cripe and Envoy, Inc. were tabled at the last meeting. No money is appropriated to pay these invoices. The options are transfer funds, request an additional appropriation or pay it out of the Liability Trust. Altman asked Swift to find out what the available account balances are.

Terrorism Insurance Coverage

Swift stated the Terrorism Insurance Coverage is included, at no extra charge. The minutes indicated that it was tabled.

Auditor

2008 Gross Wages

Dillinger moved to approve the list of 2008 Gross Wages. Altman seconded. Motion carried unanimously.

Transfer of Vehicle Title

Dillinger moved to approve the transfer of vehicle title for the HHW (Household Hazardous Waste) to the Hamilton County Solid Waste Board. Altman seconded. Motion carried unanimously.

Clerk's Monthly Report

Dillinger moved to approve the Monthly Report of the Clerk of the Circuit Court dated December 2008. Altman seconded. Motion carried unanimously.

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Payroll Claims

Altman moved to approve Payroll Claims for the period of December 29, 2008 thru January 11, 2009 paid January 23, 2009. Dillinger seconded. Motion carried unanimously.

Release of Bonds/Letter of Credit – Drainage Board

Dillinger moved to release Bonds and Letters of Credit for the drainage board. Altman seconded. Dillinger and Altman approved. Holt abstained. Motion carried.

- HCDB-2007-00009 – Bond Safeguard Insurance Company Subdivision Bond No. 5026621 for Ridge at Hayden Run Section 3 Storm Sewers - \$146,970.00
- HCDB-2007-00010 – Bond Safeguard Insurance Company Subdivision Bond No. 5026618 for Ridge at Hayden Run Section 3 Monuments and Markers - \$2,640.00
- HCDB-2008-00006 – Bond Safeguard Insurance Company Subdivision Bond No. 5031064 for Maple Village Section 3 (aka Sonoma) for Storm Drainage and Monuments & Markers - \$145,752.00.
- HCDB-2008-00023 – Community Bank Irrevocable Standby Letter of Credit #377 for Hinkle Creek Estates Section II Subsurface Drains - \$27,500.00.

Vendor Claims

Dillinger moved to approve Vendor Claims to be paid January 27, 2009. Altman seconded. Motion carried unanimously.

Window Film for Auditor's Office

Ms. Dawn Coverdale requested permission to have window film installed on her office doors. The cost is \$588.00. Altman moved to approve. Dillinger seconded. Motion carried unanimously.

Ordinance 1-26-09-A, Hamilton County Comprehensive Plan Amendment for Fall Creek Township
Ordinance 1-26-09-B, Hamilton County Zoning Ordinance Amendment for Fall Creek Township

Mr. Mike Howard reported the Town of Fishers has approved a comprehensive plan and zoning ordinance for their two mile jurisdiction outside of Fishers Town Limits. The Commissioners directed the Hamilton County Plan Commission to prepare a comprehensive plan before the two mile jurisdiction issue had been resolved. The Fishers Ordinance and Comprehensive Plan appear valid on their face and it appears they have done everything to exercise that jurisdiction. Under Section 205E of the Planning Code there is discussion concerning if a county and a municipality adopt a comprehensive plan over the same piece of land; unfortunately there is no direction as to first in time, first in right. As a general rule of statutory interpretation if there is no guidance we presume that if one unit has exercised lawful jurisdiction that absence express language granting jurisdiction to another unit upon some other act, that first in time is first in right. Howard stated there is no legal precedent that the Fishers act is conclusive, however we know nothing is conclusive until there have been rulings by another branch of government. Howard stated he believes it would be in the Commissioners best interest to receive the Comprehensive Plan and proposed zoning ordinance and they be tabled indefinitely. This would provide a tremendous service to the community because one of the things we have all worried about is to make sure someone is zoning. By tabling this it gives the Commissioners a plan that if there were a challenge to the Fishers two mile jurisdiction the Commissioners could pull this plan without delays. Altman asked by tabling the Comprehensive Plan proposal it will not go stale and we can stand ready to act at any time? Howard stated the Comprehensive Plan will not go stale. Altman asked with that flexibility is it Howard's advice that we put it on the table because adopting it at this time, even with restrictions with serving only those areas that may be uncovered by zoning, it still creates ambiguity? Howard stated he believes it would cause ambiguity. Howard stated any major development that will occur in this area will have to have sanitary sewer and when they get sanitary sewer there is an automatic consent to annexation in Fishers as other municipalities. Howard stated it is the intent of the Town (Fishers) to create a BZA (Board of Zoning Appeals) solely from people who live outside the municipal boundaries. Most of the issues at dispute will be those type of tweaking issues that are usually handled by the BZA. This is a concession because the statute does allow either the municipal BZA with jurisdictional appointments to serve as a BZA for the entire area or a special BZA with people who live outside of the municipal limits. Altman asked if Howard is satisfied that there are no areas in Fall Creek Township that lie outside the two mile radius? Howard stated yes, there was a question about property between 146th Street and I-69, which has been annexed. Trustee Terry Michael stated it does cross jurisdictional guidelines. Howard stated he has spoken with Noblesville and the only property within the Noblesville limits in the two mile jurisdiction are existing residential uses and they are fine abdicating that to Fishers. If anyone develops those properties they will have to be put on Noblesville sewers and it will take care of itself. Dillinger asked about the BZA that would be developed specifically for the annexed areas, the appointments would be one from the Commissioners and three from the Town Board? Howard stated he believes they would be one from the Commissioners, and four from the Town Board but they would all have to live within the un-incorporated area. Dillinger asked who dictates those appointments? Howard stated the Town Council. Mr. Martin Scribner stated he believes there would be two (2) appointments from the County. Howard asked if the two people appointed to the Plan Commission automatically sit on the BZA? Scribner stated no, they can be different people. Howard asked if they could be the same people? Scribner stated he believes so. Dillinger stated he has received several calls from the development community concerned that if we passed the Ordinances the deals already made would be protected, if there were a transfer of authority; Dillinger asked Mr. Kiphart if that has been done? Mr. Kiphart stated the developments approved by Fishers are shown on our zoning map. Dillinger asked Mr. Harden if that answers his concerns. Mr. Steve Harden stated they represent four projects over 450 acres and he has provided the PUD Ordinance to Mr. Kiphart. Harden stated he has not seen the revised map. Harden stated if these PUD Ordinances, which incorporate all of the development standards are significantly higher than the proposed standards for this new district, then these ordinances along with the procedures to implement them are incorporated into the new zoning maps and standards then it would satisfy their concerns. Dillinger asked Kiphart if they are included? Kiphart stated yes. Howard

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asked Kiphart if it is not just PD but per Ordinance or document? Kiphart stated it has the Ordinance number on it and whatever zoning classification is in the Ordinance. Altman stated her point is when she asked Mr. Kiphart to pursue this when the referendum was on the ballot, it was always her intent that we have no part of the county that goes without zoning. With that in mind, given the possibility of ambiguity of adopting this at this time Altman moved to table. Dillinger stated he would like to hear public comments before we vote. Dillinger stated there has been a lot of unrest and confusion in this area and he wants to support the people's will. On the other hand, given our Counsel's caution and the fact that Fishers challenge of the annexation is finished so that area will mostly be annexed, we are talking about a short period of time which has confused the situation. Holt stated Howard's comments have narrowed the issue to whether we are going to table the Comprehensive Plan today or not and if someone came to address the Board today they should have the opportunity. A lot of the audience today attended the Plan Commission's public hearing and had a lot of helpful input. Holt asked comments limited to either tabling or not tabling.

Marion Hensley, 12089 Atlantic Road, stated he had plans to talk about a win-win solution. It seems obvious to him that there are a lot of people that want to slap the voters of Fall Creek Township in the face. We made a strong statement in the township over one half of the folks, including annexed citizens, voted for that. By tabling the issue and ignoring the long history of questionable legalities, not only are there the issues that Mr. Howard that has brought up there are a whole series of issues that have gone back many years relating to the joinder and interlocal agreements that have questionable status and how everything that has happened since has a bearing on that. Hensley urged the Commissioners to reconsider tabling. Hensley stated the real answer is to go forward with it and get appropriate legal resolution of the whole history of questionable issues to put it all to bed. By tabling it that past history continues to fester and it is in no ones best interest, the current landowners, future developers or the cities, towns and county. That is the root of the problem and to ignore the root of the problem would be a mistake.

Dillinger asked when does the annexation take place? Holt stated 2011. Dillinger stated once the annexation takes place the two mile jurisdiction comes into play. Mr. Michael stated there is no issue with the two mile radius; it exists under the current boundaries of Fishers. Mr. Michael stated Mr. Hensley is speaking of the landowners that will not be annexed. Howard stated Mr. Hensley's point is that some of these people it does not make any difference. Mr. Brian Babb stated the annexation would be in January 2010 with the taxes would be initiated in 2011. Mr. Hensley stated the issue is that they have had poor representation in the past for legacy landowners' rights and it is not a good situation. No one is trying to stand in the way of development. The win-win situation would be if the county had taken over the zoning, as intended by the voters, then the contiguous properties along Fishers boundary would have had the opportunity to be voluntarily annexed to go into Fishers zoning and go into the developments appropriate for Fishers to inherit. The proposal would make it a win-win to protect the legacy landowners' rights with representation through the county and elected officials in the county and not through the Fishers Town Council which we have no influence over. We have no legal representation with them. Altman stated she sympathizes with Mr. Hensley; the county's hands are tied. The two mile jurisdiction surpasses anything we can do and by putting the comprehensive plan in place we actually create more problems and foster more litigation which no one desires. Hensley asked if that sweeps under the rug any past issues that would be the root of the validity of the two mile rule today? Altman stated she assumes as landowners they have every bit of standing to pursue that. Nothing is swept under the rug we are living with decisions made by various components and right now the two mile jurisdiction has been exercised which Carmel did with Clay Township and we could do nothing. It is how the State legislature has determined how to do land use and planning. We are only instruments to carry forth State law and the only reason she requested this to be done was to make sure, should there be a defective exercise of that, which she does not know if it has been settled, that you are all protected with some form of zoning.

Mr. Terry Michael, Fall Creek Trustee, stated this puts him in a situation at the Trustee level, he is supposed to release the joinder agreement once he has achieved planning and zoning through this Board. He can not release the joinder agreement with Noblesville until he has planning and zoning, according to the Resolution passed by his township board. They would still be under the old joinder agreement and interlocal agreement with the Town of Fishers and Noblesville. They have been dealing with this for two years and four to five years in a very gray area. If the Commissioners chose to accept this planning and zoning and the Town of Fishers takes over, great. In either case it is a huge win-win for the un-incorporated area. They will have representation and will have the Commissioners to go to when something goes wrong. Altman asked Michael to clarify how the county will take control; she does not believe we can, given the state of facts as we see them today. Michael stated he can not release the joinder agreement until he has planning and zoning in place and if this is the planning and zoning and his attorney says that is perfect, he is ok with it. Dillinger asked if Mr. Michael is saying if we table this and the assumption that the Fishers two mile jurisdiction continues, he can't release the joinder from your Board? Michael stated unless he hears it from an attorney or clarification from the Attorney General's office he can not release it because his Board has told him to make sure planning and zoning is in place. Michael stated it would be his hope that the county would adopt this and let the Town of Fishers absorb it the first of next month and then we will be done.

Mr. Brian Baehl, Fishers Plan Commission member, thanked Mr. Kiphart for his help and the meetings he facilitated. In 1964 the Fall Creek Township Board entered into a joinder agreement with Noblesville, some believe that is the driving force right now. Some believe the Fishers two mile jurisdiction is not legal right now that the joinder is still in effect. Until the joinder agreement is released by Noblesville the joinder agreement is taking precedence right now. Until Mr. Michael releases the joinder agreement the two mile jurisdiction does not take effect. Bale stated he wishes a win-win situation. There are a lot of people in Fall Creek Township that believe the joinder agreement is still in effect. IC Code 36-7-20.5(e) has two parts, the first part states if there is no comprehensive plan in place and the county can take that if it has a comprehensive plan first. It is a question of who is on first base first? The 1964 agreement is what is on base first. The second part of the Code states if the county has jurisdiction they can release it back to a municipality.

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Right now the county does not have a comprehensive plan in place so the middle part of 20.5(e) is not applicable. The third part of 20.5(e) states if a municipality has jurisdiction that the county can take it away from them if the ordinance is the same. Two out of three of 20.5(e) the county commissioners have the ultimate approval for this. If the county adopts it today then they are first because the joinder agreement with Noblesville has not been released yet. We can have a win-win situation by tabling this indefinitely you are basically tying all of our hands with any negotiation we have with Fishers. To say that Fishers was first with the two mile rule, a lot of people do not believe that, the joinder agreement of 1964 takes precedence today. Howard stated this is an issue of jurisdiction, one of the rules of legislative interpretation in municipal government is that the ordinance is presumed valid if you follow all of the procedures until a court adjudicates it to be invalid for some reason. That is what he has based his statement that Fishers has adopted a Comprehensive Plan, they have approved an ordinance and they are there. When the joinder is dissolved it is still subject to question, it says you can not dissolve the joinder until the referendum passes and he does now where it is. It is clear that the minute it is adopted or dissolved Fishers has had the first comprehensive plan and the first ordinance. The two mile section of the law are put in place to set up procedures where people can be protected by zoning, there is nothing stating how you get out of these deals. Jurisdiction is fundamental, when one entity has jurisdiction unless there is an express contradiction of how you get divested of them as a general rule they are there.

Mr. Brian Babb, representing Fishers, stated he agrees with Mike (Howard) and the only thing that if the county moves forward with the Comprehensive Plan are that you would create a situation where there would be uncertainty, not just in the short term but for a long time. Moving forward would be a statement that you are going to exercise jurisdiction and if there are two comprehensive plans in place then the question becomes where do you go to have these issues decided? The point that Mr. Michael has raised may be a valid point but he is not sure it is productive to insert it at this hour without ever talking to anybody at Fishers about it. We can sort through these issues, he understands he is a fierce advocate for those he represents and he does not want to do anything improper. There can be come kind of compromise on this issue. To move forward on this does nothing but create ambiguity, not only for a short period of time but potentially for a long period of time. To the extent they could work with Mr. Michael to give him some comfort, they could try to research the issue and try to resolve it. Altman asked if Fishers plans any action within the next 30 days that would place them in a better position if we tabled this? Babb stated he does not believe so; we don't plan on doing anything within the next 30 days. Altman asked if there is any action Fishers could take that would place them in a better position in the next 30 days if we table this? Babb stated not that he is aware of; they could meet with Mr. Michael and sort through this issue. Dillinger asked if you could, why have you not met with him? Babb stated this is the first he has heard of this; that Mr. Michael is somehow prevented from doing what he thinks he has to do. That somehow your decision is going to somehow prevent him from doing what he needs to do to follow up. Mr. Howard stated Mr. Michael's board has instructed him to not dissolve the joinder until he is absolutely sure that somebody is in charge. We don't know what a court might say in this situation, we know the Ordinance is valid on its face until somebody challenges it and gets it determined as invalid; if that happens the Comprehensive Plan will be ready. Mr. Babb stated one thing Mr. Michael is concerned about is that there will be planning and zoning in effect, which is the case today. If planning and zoning is in place this Board should do or say something to give a comfort level so he can advise his clients that they can terminate the joinder agreement. Fishers is doing the right thing and making sure there is representation.

Mr. Art Levine, Fishers Town Council, stated they both tried to act in the best interest and agreed they all wanted to make sure there was never a time when there was no zoning. Levine stated he agrees and is happy with the decision to table the comprehensive plan, how long will it be tabled? Howard stated there is no specific statute of limitations for cities, for counties their ordinances can not be challenged after 30 days. It would be Howard's opinion that under the general statute on all other things not specifically enumerated would be two years. Mr. Babb agreed. Levine asked if the intention is to table this indefinitely? Altman stated that would be correct. Dillinger stated his inclination is to not table this. The attorneys have not convinced him the Judge would not rule that way. He is frustrated with the Referendum even though it is not what the Referendum said, he thinks that the people believe this is what it meant. Those people want the county to have jurisdiction. Whether we table it or not there will be legal challenges. There has been so much unrest with everything that has happened. It would be better for us to pass it and if it is going to be challenged then it will be challenged and let a court decide. Mr. Babb mentioned he lives next to a piece of unincorporated property, who would be better suited to deal with those issues, people that may or may not be from the area verses people who live in the community. Levine stated he hated that people misinterpreted the wording on the Referendum and voted the wrong way. He can not be convinced that people understood the wording, which led to confusion. The wording was so bad and he refuses to believe that with 65,000 residents of Fishers that they truly wanted zoning to avert to the County rather than keep it locally. To use that as a reason to not table this he respectfully disagrees.

Ms. Maryann Shepherd, 13182 Cyntheanne Road, asked what does it mean to put something on the table? Holt stated it means that we would not act on it unless someone voted to take it off the table. For us to approve the Plan Commission's Comprehensive Plan someone would have to make a motion to take it off the table and reconsider it. Altman stated it does not kill it; it puts it in unfinished business. Holt stated we have had two legal opinions that it will expire in two years. Shepherd stated the State law is pretty clear on how a group of citizens can remove themselves from a joinder with a Referendum. We did exactly what the law said, to the word, even though it was confusing. It was only confusing only because entities prior to us, without our knowledge, did an interlocal agreement. That is what made the question confusing. Dillinger stated he agrees with that. Shepherd stated her concern with tabling it and not making a decision is the people who purchased property after 1964 and did so knowing they were under Noblesville zoning. Then things changed without their knowledge, input, or opinion. Things changed because of governmental entities. Shepherd stated she is very frustrated to continue to hear government entities say "hire an attorney and sue us", "get legal representation, take it to court", "if you want to shred dollars up on the third floor"; no we don't. Why should we,

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the people, who had no say in any of these changes, beginning in the early 2000's foot that bill? We did not create this monster and we are trying to get it resolved. Today is the first she has heard that Fishers has a comprehensive zoning plan for her area, they did not hold any public meetings, did not ask us what we want our neighborhoods to look like and that is indicative of why we are not happy. They keep making decisions and they don't bother to tell us they made decisions that affect her property use. The County held public meetings, have been very accessible, which is what we want. We want someone who will work with us so we can design our neighborhood the way we want. Shepherd reminded the Commissioners that the will of the people, the Referendum, did pass in November and the people did say we want to. Shepherd stated she worked outside of the polls promoting the passage of the Referendum and she did have a few people ask questions. She did try to be neutral and give the pros and cons. Most people she spoke with knew what the question meant and knew what their answer was going to be.

Altman stated but for the fact that the legislature allows cities and towns to extend a two mile jurisdiction radius, which it has been for years and years, but for that fact your Referendum would have had your intended consequence. But again the State statute, which we are subordinate to, grants cities and towns that right to extend their jurisdictional lines for planning and zoning.

Mr. Doug Allman, 16124 E. 126th Street, stated the issue revolves a local municipality that has this manifest destiny to take over this area and do with it what it pleases. For us in the area we believe zoning and planning should be about the will of the people and what their community standards are, much like the Town of Fishers wants to set their community standards. Therein lies the rub, when this transfer took place we were left out of that process. Fishers did not come to us with planning and zoning maps and ask us what we thought. There has been no planning and zoning maps for the time period they have done the joinder, where they assumed the power under that joinder switch. The community has been left without that expectation of what their standards that they want. We are then forced, as a community, to seek lawyers and spend money, this is the frustration we have had in the area. It is important that government serves the people. We have a municipality that has been very hostile, a government that has been very hostile towards the people it oversees and yet those people don't have the ability to influence them and vote for them. There is something fundamentally wrong when a local municipality has fought us and the people in this area in the way they have. When the joinder took place they were an R1, it should have transferred. Our township trustee said everything transfers, grandfathering occurs, we had them in and they refused to recognize that agreement. It is still very hostile and we don't see that changing. Allman urged the Commissioners to not table the Comprehensive Plan, adopt it as is and in the spirit of cooperation Allman urged the governments to seek legal opinions on this so it does not have to fall back on the little people who have been left out and are frustrated. Good government should come forth and provide a remedy for these people in this area. It would serve all the governments well as well as the people the government oversees.

Mr. Gordon Byers, representing Irving Materials, concurs with Mr. Howard's comments on tabling. He represents a landowner with 100 acres and has a little defect in the Comprehensive Plan; it has zoning jurisdiction through Noblesville in the late 1990's to obtain zoning classification and he believes that was not picked up in the county plan. By tabling the plan the Commissioners accomplish the goal of the plan being a back-up. If individuals have concerns between Noblesville and Fishers, the zoning that was obtained from Noblesville will be vested or have non conforming status so Fishers can not take away whatever zoning is in place on these landowners. Fishers has offered, through communication, to change the zoning to meet higher density. His client has 100 acres with the southern boundary on Fall Creek and the eastern boundary on the Hamilton County line and has an extensive history of sand and gravel extraction and is probably being jumped over in the Plan as it is not an existing Fishers defined PUD Ordinance. Byers encouraged tabling, it will create the least amount of confusion for landowners that have zoning rights in place now. Dillinger stated he had asked Mr. Kiphart if those had been grandfathered in. Byers stated he doesn't think Mr. Kiphart knew anything about this. Dillinger asked if this passed today what would happen to Mr. Byers issue? Kiphart stated under the Hamilton County zoning ordinance it would be an illegal non-conforming use. Byers stated if he came in next week to get a building permit Mr. Kiphart could deny the permit. Tabling will allow Irving Materials to continue to conduct business. Dillinger asked why was this issue not brought up during the Plan Commission public hearings? Byers stated he found out about it the day after the public hearing and he contacted Mr. Kiphart. Dillinger stated we have a positive recommendation from our Plan Commission.

Dillinger moved to act on it positively. Holt asked if there were any other public comments? No response. Holt stated Altman made a motion that was not timely and Dillinger also did. Dillinger stated there is a lot of confusion; he understands what has been said about the Referendum and the intention of the unincorporated residents was to do exactly what they are asking us to do. Dillinger stated we have a positive recommendation from our Plan Commission. Dillinger moved to approve the Comprehensive Plan Amendment. No second, motion dies. Altman moved to table. Holt stated the Plan was put together as a fail safe so Fall Creek Township would not be left without zoning. The intention was not that Hamilton County, who have folks from Adams, White River, Jackson Township, Wayne Township and Noblesville Township all serving on that Board are probably not the best decision makers for what would take place in unincorporated Fall Creek Township. We have relied on Mike Howard's advice for a long time and it has served us well and he believes his advise is correct in that we would be doing you a disservice to approve the Comprehensive Plan. He is comfortable with the shelf life discussion, surely we would know if there was a challenge to the two mile jurisdiction in a time short of that would put the residents in jeopardy of having no zoning. Holt seconded. Altman stated the true remedy is at the State Legislature, we face it all the time, and we have ambiguous laws. We don't give the two mile jurisdiction, the State does. Holt stated it is the classic zoning without representation and the BZA being all from your community is a significant olive branch and he commended Fishers for offering that. In a typical municipality unincorporated clash that would not be the case. Altman and Holt approved. Dillinger opposed. Motion carried.

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Holt called a recess in the meeting. [2:47:02]
Holt called the meeting back to order. [3:01:49]

Microvote Software Agreement

Ms. Peggy Beaver requested approval of the software license agreement with Microvote for the Election Management System. The cost has increased to \$9,500. The funds are budgeted. Altman moved to approve. Dillinger seconded. Motion carried unanimously.

ISSD Purchase Orders

Ms. BJ Casali requested approval of purchase orders for the migration from GroupWise to Microsoft Exchange for the county e-mail system. Dillinger asked what happens if we don't do this? Casali stated we won't have back-up and our disaster recovery plans are scrapped. Dillinger asked how much money do we have budgeted for ISS? Casali stated \$641,411 with one other major project for the year. Dillinger asked if they do any long range planning? Altman stated yes, that is what the ISS Board does. We have been planning this migration for three years and to do this for an enterprise of our size is very expensive. Casali stated they have also been working on a disaster recovery site for three years and working on a green computer room, which is the use of virtual servers thereby saving electricity, space and cooling requirements. Altman moved to approve. Dillinger seconded. Motion carried unanimously.

- Purchase Order 090126–Migrate - \$6,770.00
- Purchase Order 090126–DR Site - \$95,758.00
- Purchase Order 090126–VM Equal - \$56,296.00
- Purchase Order 090126–xchangeBU - \$8,020.34
- Purchase Order 090126–OPST - \$106,608.00
- Purchase Order 090126–Blade - \$76,321.00

CDBG Public Service Contracts

Mr. Mark McConaghy requested approval of public service contracts for the CDBG (Community Development Block Grant) program. Dillinger moved to approve. Holt seconded. Motion carried unanimously.

- Hamilton County Area Neighborhood Development, Inc. (HAND)
- Neighborhood Christian Legal Clinic
- Prevail, Inc. for Hamilton County
- Saint Vincent de Paul Society/Our Lady of Grace Catholic Church
- The Salvation Army, Hamilton County
- Alternatives Incorporated of Madison County
- HOPE Family Care Clinic

Buildings and Grounds Contract

L3 Communications

Dillinger moved to approve the annual maintenance contract with L3 Communications for maintenance on the X-ray equipment. The cost has increased from \$4,200 to \$4,500 for 2009. Altman moved to approve. Altman stated on non-essential items she thinks we need to rethink some of the maintenance contracts. These are not huge numbers but they add up. We have all these things that we have done maintenance on and she does not think we are getting a lot. Holt asked Altman if she would chair a maintenance contracts taskforce and look at the full list for the year. Altman asked Mr. Swift to get a list of the contracts for her to review. Dillinger seconded. Motion carried unanimously.

Administrative Assistant

Invoices

Swift stated he has reviewed the invoices with the Auditor and the total is \$54,571.03. for Cripe and Envoy. Swift recommended a transfer of funds from Court of Wards. Dillinger so moved. Altman seconded. Motion carried unanimously. Altman asked Swift to check the budget presented by Envoy to make sure all of the design fees, etc are in their budget so it can be returned to the Court of Wards line item.

Sheriff [3:16:03]

Uniform Approval

Mr. Ryan Horine requested approval of uniforms for the Sheriff's Department Bicycle Team. Dillinger moved to approve. Altman seconded. Motion carried unanimously.

Horine requested approval of the turtlenecks for the Sheriff's Department. Dillinger moved to approve. Altman seconded. Motion carried unanimously.

Horine stated they have an abundant amount of firearms that are no longer serviceable or have been discontinued with a different line. They are requesting permission to be traded in and replace the handguns. Altman asked what happens to the traded in firearms? Horine stated they are traded into Keeslers in Evansville and we will receive firearms back. Keeslers deals a lot with police departments. They will build the firearms back up and re-sell them. Sheriff Carter stated the only difference of this weapon and the one that can be purchased by a citizen is the capacity of the magazine, the government use high capacity magazine and that is not sold with the handgun if it is sold to a private citizen. They are offered back for sale to the officer that owned them but they have to go through the dealer to purchase them. Dillinger moved to approve. Altman seconded. Motion carried unanimously.

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Attorney

Resolution 1-26-09-A, Enforcement of Order of Hamilton County Health Officer

Howard requested approval of Resolution 1-26-09-A, A Resolution Authorizing Enforcement of Order of the Hamilton County Health Officer. There are several residences on the south side of 236th Street which are directly discharging into the William Baker Drain. Under the statute the county performed testing to analyze the situation and evaluate possible remedies. The health department has worked with those property owners since 2002 to try and find a solution. A suggestion was made to look at sub-standard septic systems but to date no homeowners have applied or moved forward in that direction. An Oder was sent to all of the property owners in 2002 and Dr. Harris sent out orders requesting ceasing of discharge effective in August and this has not been done. The purpose of this Resolution is to move forward with a petition seeking a show cause hearing why the Health Department Order should not be enforced by injunctive relief. Dillinger moved to approve. Altman seconded. Altman asked if it would make a difference to these people if the county purchased land behind the house and somehow did a long term repayment schedule for them to invest into a finger system away from the water supply, if we gave them an option besides what we have given them so far? Mr. Barry McNulty stated he is not sure he can answer the question because they have not been given that option. McNulty stated that would open up some additional opportunities but they would still have to invest quite a bit of money to solve their problem. From the health department's position we did not have a specific remedy to solve their problem; that is why our order was to stop the discharge and disconnect off of the county tile. McNulty stated they need to work together and either work with the Commissioners or the farmer to solve their problems and we have not seen that effort. Howard stated he has spoken with Mr. McNulty for months and there is no sense of urgency by the residents. Altman concurred we need to make sure they understand this is a real issue and we will pursue it but she would like to offer some alternate that would not be that expensive on our part. Howard suggested McNulty look at how much acreage we would need and the costs. There will still need to be a sense of urgency. Altman stated it would still be the residents cost for the tank and finger system. Holt asked if all of the offending properties are on the south side? McNulty stated yes, all that they know of. McNulty stated they would be happy to facilitate this but they would like to move this along and get some time frames that they have to meet. Motion carried unanimously.

Fishers Board of Zoning Appeals Appointments

Dillinger moved to appoint Brian Baehl to the Fishers BZA (Board of Zoning Appeals). Altman seconded. Motion carried unanimously. Holt asked if these people are annexed will they go off the BZA? Howard stated yes. Altman moved to appoint Doug Allman to the Fishers BZA. Dillinger seconded. Motion carried unanimously.

Conveyance of Land to Duke Energy

Howard stated the deed conveying land to Duke Energy for the Hamilton County Port Authority was before the Commissioners, Town of Fishers and City of Noblesville. The deed did not talk about the reservation of rights for trails. The baseline document talked about a trail but there was no thou shall or thou shall not. Howard has worked with the attorneys for Duke and added a paragraph with the reservations of rights. If Duke finds that the trail would materially interfere with its use of real estate for their utility purposes they shall authorize the maintenance of the trail and grant an easement to the grantor. Howard recommended approval of the deed. Altman moved to approve as revised. Dillinger seconded. Motion carried unanimously.

Liability Trust Claim

Howard requested approval of a Liability Trust Claim payable to Howard & Associates in the amount of \$3,098.00. Altman moved to approve. Dillinger seconded. Motion carried unanimously.

US 31 Project – Request by Westfield

Mr. Brad Davis stated the City of Westfield has requested a letter from the county supporting their effort to INDOT to include an overpass on the US 31 project at 202nd Street. Westfield is intending to ask INDOT to commit to provide funding in the future as part of the US 31 upgrade project. Altman stated the TAC Committee does not think INDOT has the money to do the project as first proposed. They have already asked for additional accommodations in Westfield, which they deserved. Altman stated she does not feel comfortable asking for something that is an impossibility and would give INDOT another reason to say they can't afford that upgrade. No motion, request denied.

Highway Meeting

Davis reminded the Commissioners there is a highway meeting on Friday, January 30, 2009 at 7:30 a.m. at the highway department.

ISSD

Dillinger stated he is not comfortable with the requests for purchases from the ISS Department. Dillinger stated they have requested million and millions of dollars to fix something to come back a few years later and say that was not the solution. Dillinger stated he is not comfortable with this and recommended speaking with a consultant about a long range plan. Altman stated you can't prepare a long range plan when technology changes every two to three years. Dillinger stated this is what Structurepoint does with other counties. Altman stated that is a waste of money. The reason there is so much turn over is because you have the newer, better and faster. The restraint that needs exercised is do we really need newer, better, faster or do we defer it for a couple of years; the ISS Board is doing that. Dillinger asked if Altman would have an objection to hearing what Structurepoint offers? Altman stated she does not know what they would do that is any smarter than what we do already. Altman stated she is not comfortable hiring an outside consultant unless there is a specific project. Dillinger stated he would like the ISS Board to talk with them. Holt supported Dillinger's suggestion to talk with the vendor. Altman stated she does not want to spend a lot of time because it is not a good idea given the quality of people that we have on staff. We know exactly what this county does and what the functions are and where we have gaps. We do a really good job. Holt recommended Dillinger add it a meeting agenda.

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Commissioner Committee Reports

Fairgrounds Event Coordinator

Holt stated Commissioner Altman had requested the Fairgrounds Event Coordinator be in place after January 1, 2009. Security has been employed and it has been revenue neutral and has worked out well. The 4-H staff is concerned that to add an event coordinator on top of the Security personnel will not be revenue neutral and for the majority of events that they are involved with they think this person would be sitting there with nothing to do. They have asked if the Commissioners would delay the implementation of that recommendation until such time that it appeared it was really necessary. Altman asked how are they handling the keys, audio visual, etc.? Holt stated they are using the security firm and the county maintenance staff is required to be at the event and know how to work the audio visual. Holt recommended we not add staff if this seems to be working and table this initiative. Altman stated she does not support this; we have a six million dollar investment that has some real gaps and she does not think they are totally addressed in terms of service for the people. If we want to rent out the buildings we need someone there that knows how to work the equipment. If we want to cross-train a maintenance person, that is a consideration but we need to make it an expectation that whoever is out there for events can handle the equipment and handle the facility. Coverdale stated she has had this conversation with Steve Wood and this is something he is looking in to. He is scheduling his maintenance staff so they are at the facility during events rather than paying them overtime and having five guys sitting around all day when they are needed at the facility at night. Coverdale stated she does not know if Wood has gotten to that yet, but that is his plan. Altman stated that would make sense. Dillinger agreed and if the people working the events are more than just janitorial he does not have a problem with that.

Guest House Ordinance

Holt stated they have received a letter from Randy Leerkamp, Attorney for the Plan Commission, regarding the Guest House Ordinance which was sent back to the Plan Commission. They are grinding it really fine on how this will work with the mother-in-law apartment. The request from the Plan Commission was for Mr. Leerkamp to draft a letter to the Commissioners saying we would like to call it quits on this and the prohibition against the guest house would be the new ordinance and people can go to the BZA if they want to do something. Holt stated the members of the plan commission could not decide on a definition of a guest. Altman asked if there is an exemption on family members? Howard asked if it would be reasonable to have a special exception which the BZA has jurisdiction over and some guidelines to the BZA that it would not be permanent, rent to strangers, etc. Dillinger agreed that the county doesn't need to be involved in this. Altman stated what do you do with the person who has multiple apartments built off of their house and the owner calls them a guest. Most of the ordinances she has looked at state that family members are exempt and then state that no one else can pay for rent. Dillinger asked if he could rent his basement? Altman stated that would be a multi-family house. Holt stated if he has had a stroke and wants a caregiver to live under his roof and I put that on I should have the ability to do that so I don't have to go to the nursing home, the BZA will grant that right. Altman stated you should prohibit and allowance by exception, which makes it worse. Holt stated they are just outlawing guest houses and they can come in and ask for a variance. Altman stated that is fine she did not like where it stated they can have guests. The definition of guests was very vague. It was not a prohibition against guest house. Dillinger stated he does not think we should do anything.

RFP on Energy Savings

Holt asked what is the status on the RFP for Energy Savings? Swift reported the RFP went out but it included the LEED Certification, which was removed. Swift stated he does not know if that has gone back out. Mr. Steve Wood reported the RFP has been sent back out. The Commissioners asked Mr. Swift to be the point person on this issue.

Certificates of Liability

Altman stated they received a Certificate of Liability that list the Auditor's office as the insured instead of the Commissioners. Altman asked that a sample Certificate be prepared so everyone knows how it should look.

Liability Trust Claim

Altman moved to approve a Liability Trust Claim payable to Coots, Henke & Wheeler in the amount of \$11,134.62. Dillinger seconded. Motion carried unanimously. Holt asked the Auditor to make sure this claim has not been double paid.

Altman moved to adjourn. Dillinger seconded. Motion carried unanimously.

Commissioner Correspondence

U.S. Department of Housing and Urban Development Annual Performance Review – Program Year 2007

U.S. Department of Housing and Urban Development Updated Analysis of Impediments to Fair Housing Choice – 2008

IDEM Notice of Sewer Permit Application

131st Street & US 31 Infrastructure – Carmel

The Legacy Master Infrastructure, Phase 2 – Carmel

IDEM Notice of Business Permit

HAMCO, LLC dba Hamilton County Septic & Sewer – Noblesville

Certificate of Liability Insurance

Bright House Networks, LLC

Culy Construction & Excavating

Ergoflex Systems, Inc.

MINUTES
HAMILTON COUNTY BOARD OF COMMISSIONERS
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Commissioners Courtroom
One Hamilton County Square
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Present

Christine Altman, Commissioner
Steven C. Dillinger, Commissioner
Steven A. Holt, Commissioner
Robin M. Mills, Auditor
Fred Swift, Administrative Assistant to Commissioners
Kim Rauch, Administrative Assistant to Auditor
Michael Howard, Attorney
Mark Bowen, Sheriff's Department
Brad Davis, Highway Director
Jim Neal, County Highway Engineer
Joel Thurman, Highway Project Engineer
Brandy Wariner, Highway Public Service Representative
Dave Lucas, Highway Staff Engineer
Mark Fisher, Highway Project Engineer
Christopher Burt, Highway Engineering Technician
Tim Knapp, Highway Right-of-Way Manager
Matt Knight, Highway Bridge Program Engineer
Faraz Khan, Highway Staff Engineer
Kathy Howard, Highway Department Administrative Manager
Bob Davis, Highway Superintendent
Larry Stout, GIS Director
Joe Seig, GIS Analyst
Kim Good, Treasurer
Todd Scott, GridLock
Larry H., Highway Tech
David Hesse, GridLock
Judy Levine, Council President
Art Levine, Fishers Town Council
Martin Scribner, Fishers Town Staff
Brent Leininger, Martin Marietta
Patti Smith, BLN
Nancy Nance, Hamilton County Co-Op
Floyd Burroughes, FEBA
Bill McCormick, CPI
Peggy Beaver, County Clerk
Brian Baehl

APPROVED
HAMILTON COUNTY BOARD OF COMMISSIONERS

ATTEST

Dawn Coverdale, Auditor